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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,312	08/07/2001	Raymond L. Adams JR.	ADAMS R-1	1007

7590

01/15/2004

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EXAMINER

ENATSKY, AARON L

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 01/15/2004

3

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/923,312

Applicant(s)

ADAMS, RAYMOND L.

Examiner

Aaron L Enatsky

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 11-16, and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US Patent No. 5,672,131 to Osborne et al. ("Osborne"). Osborne teaches a shaft having a first and second end (Fig. 2), a plurality of contacts that extend radially from the shaft (Fig. 2 and 1:34-54), visual and audio indicators that generate a pattern to be repeated by a game participant (1:34-54 and 2:29-34), and the contacts are to be struck to mimic a pattern generated by the game (1:34-54).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osborne. Osborne discloses the invention as described above, but does not teach colored lights corresponding to different contacts. However, Osborne teaches that the concept of a pattern or sequence matching in a game was well known at the time of the invention (1:20-30). Osborne discusses the known invention, SIMON™, which uses colored lights produced in predetermined

Art Unit: 3713

sequences with the contacts that would be struck by a user. Osborne teaches improvements to the SIMON™ game (1:20-30) and additionally that lights can be used to produce a pattern or sequence of events (2:29-34). While Osborne does not mention that the lights would be colored to show a sequence, one of ordinary skill at the time would reasonably infer that it was well known at the time of invention to use colored lights to denote a sequence of events.

### ***Citation of Pertinent Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Pat. No. 4,285,517 teaches a pattern matching game with a plurality of contact surfaces and colored lights that are to be struck by a user.

US Pat. No. 4,359,220 teaches a pattern matching game with a plurality of contact surfaces and colored lights that are to be struck by a user.

US Pat. No. 5,816,580 teaches a game with a shaft and radially extending contact surfaces.

US Pat. No. 6,086,478 teaches a game with a shaft and radially extending striking surfaces.

US Pat. No. 6,210,278 teaches a game with a shaft and radially extending striking surfaces.

US Pat. No. 5,409,213 teaches a game with a plurality of striking surfaces.

US Pat. No. 5,685,776 teaches a game with buttons that extend radially from a shaft.

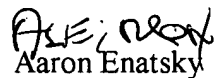
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron L Enatsky whose telephone number is 703-305-3525. The examiner can normally be reached on 8-6 M-Th.

Art Unit: 3713

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on 703-308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

  
Aaron Enatsky  
1/9/04

  
Teresa Walberg  
Supervisory Patent Examiner  
Group 3700